IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

Crl.MC.No. 2263 of 2007()

CC.124/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT, THALASSERY

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PETITIONER: ACCUSED

FAYAZ, S/O.AHAMMED, BASHEER VILLA,
THALASSERY, KAYYATH ROAD.

BY ADV. SRI.S.RAJEEV

RESPONDENTS: STATE

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM (CRIME NO.202/2002 OF THALASSERY
POLICE STATION).

BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2263 of 2007

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Dated this the 16th day of July, 2007

O R D E R

The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Section 506(i) r/w. 149 I.P.C. Altogether there were six accused persons. Accused 1, 5 and 6 were absconding. The petitioner was accused No.5. The co-accused who faced trial, i.e. accused 2 to 4, were found not guilty and acquitted. The judgment of acquittal is produced as Annex.II. The petitioner has not appeared before the learned Magistrate. A warrant of arrest issued by the learned Magistrate is chasing him. The petitioner has, in these circumstances, come to this court with a prayer that the proceedings against him may be quashed invoking the powers under Section 482 Cr.P.C.

2. What is the reason? The learned counsel submits that the co-accused having been acquitted, nothing worthwhile is likely to come out of the prosecution surviving against the petitioner.

3. I am unable to accept this contention at all. The position of law has been laid down by the decision of the Full Bench in **Moosa** v. **S.I. of Police** (2006 (1) KLT 552). The mere fact that the co-

accused who faced the trial have been found not guilty and acquitted is no reason for the absconding accused to claim any benefit/advantage. In fact Annex.II judgment clearly shows that in the evidence placed before the learned Magistrate it had come out that there was an unlawful assembly. The accused who faced trial secured acquittal on the ground that they were not proved to be members of the unlawful assembly. The petitioner's complicity had not been adjudicated at all even indirectly. In these circumstances the petitioner cannot claim any advantage from the judgment issued in favour of the co-accused.

4. The learned counsel then contends that he has information that the Government has already passed orders permitting withdrawal of the prosecution as against all the surviving accused, including the petitioner. If that be so, it is for the Prosecutor to make appropriate application before the learned Magistrate under Section 321 Cr.P.C. and the learned Magistrate must consider such request and pass appropriate orders. That the Government have decided to withdraw the case is by itself no reason for this court to invoke the powers under Section 482 Cr.P.C.

5. Lastly and finally the learned counsel for the petitioner submits that a warrant of arrest is pending against the petitioner. The same has been issued reckoning him as an absconding accused. In fact the petitioner is absolutely innocent. He had not received any notice from the court. The learned counsel for the petitioner submits that he is willing to appear before the learned Magistrate and seek bail. But he apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances it is prayed that appropriate directions may be issued to the learned Magistrate to release the petitioner on bail on the date of surrender itself.

6. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I find no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be

necessary. His bail application, if filed with sufficient prior notice to the Prosecutor, must be disposed of on the date of surrender itself.

7. This Crl.M.C. is dismissed with the above observations.

(R. BASANT)
Judge

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